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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 SCOTT JOHNSON,

12 Plaintiff,

13 v.

14 THE OPEN WINDOW PROJECT, LLC, et
15 al.,

16 Defendants.
17

No. 2:16-cv-01619-KJM-EFB

ORDER

18 After the court closed this case, plaintiff filed a motion to enforce the parties'
19 settlement agreement. Because the court lacks jurisdiction to hear plaintiff's motion, the motion
20 is DENIED.

21 I. BACKGROUND

22 Plaintiff Scott Johnson, a level C-5 quadriplegic, sued defendant The Open
23 Window Project, LLC, alleging Open Window violated the Americans with Disabilities Act and
24 the California Unruh Civil Rights Act. *See* Compl., ECF No. 1. Specifically, Johnson alleged
25 Open Window's property, 510 E. Miner Avenue, Stockton, California, had no parking spaces that
26 were marked and reserved for persons with disabilities, forcing Johnson to either park in a non-
27 disabled spot or leave. *Id.* at 3-4. Johnson sought injunctive relief, damages, attorney fees,
28 litigation expenses and costs. *Id.* at 8.

1 After Open Window filed its answer, ECF No. 5, the court ordered the parties to
2 exhaust settlement efforts and file a joint status report every 60 days, ECF No. 6. Johnson joined
3 in one status report, ECF No. 7, and, according to Open Window, declined to join the next, ECF
4 No. 9. The court then ordered Johnson to show cause why sanctions should not issue for failure
5 to comply with the court's orders, including possible dismissal for failure to prosecute. ECF No.
6 10. Johnson filed a status report but did not acknowledge or respond to the order to show cause.
7 *See* ECF No. 11. The court then held a pretrial scheduling conference and extended Johnson's
8 counsel's deadline to respond to the pending order to show cause. ECF No. 16. Johnson's
9 counsel responded, ECF No. 17, and the court discharged the order to show cause, ECF No. 18.

10 On February 8, 2018, the parties filed a joint notice of settlement. ECF No. 24.
11 They advised that they had reached "a global settlement" and expected to file a stipulated
12 dismissal with prejudice in 60 days. *Id.* at 2. The parties requested the court schedule a "Status
13 Conference/OSC Hearing" to be held within sixty days "at which the Parties, by and through their
14 attorneys of record shall show cause why this case has not been dismissed." *Id.* The court
15 vacated all deadlines and set a "FIRM" April 9, 2018 deadline for the parties to file dispositional
16 documents. ECF No. 25. At the parties' request, the court also set an April 26, 2018 status
17 conference at which, in the event dispositional documents were not yet filed, the parties would
18 "be ordered to show cause why the case should not be dismissed." *Id.*

19 On April 26, 2018, with no dispositional documents filed, the court held a status
20 conference. ECF No. 26. Open Window's counsel appeared. *Id.* Johnson's counsel, without
21 explanation, did not. *Id.* Open Window's counsel confirmed the parties signed a settlement
22 agreement, the financial component of which had not yet been fulfilled. *Id.* The court advised
23 Open Window's counsel that it would review the case to determine whether it should be closed.
24 *Id.* The court included this advisement in the hearing minutes, which were served on all parties.
25 *Id.* Johnson did not respond. Two weeks later, on May 10, 2018, after reviewing the case history
26 and the parties' representations, and taking into account Johnson's silence, the court issued a
27 minute order finding "this case has settled and no further court action is necessary. This case is
28 DISMISSED and CLOSED." ECF No. 27. Nearly two weeks later, on May 22, 2018, Johnson

1 filed a motion to enforce settlement. Mot. ECF No. 28. Open Window filed a statement of non-
2 opposition. ECF No. 29. The court submitted the motion without oral argument, ECF No. 30,
3 and resolves it here.

4 II. LEGAL STANDARD

5 Enforcing a settlement agreement is “more than just a continuation or renewal of
6 the dismissed suit, and hence requires its own basis for jurisdiction.” *Kokkonen v. Guardian Life*
7 *Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). Following dismissal, a district court lacks jurisdiction
8 to enforce a settlement agreement unless the court (1) expressly retains jurisdiction over the
9 settlement agreement in the dismissal order, or (2) incorporates the terms of the settlement
10 agreement in the dismissal order. *Id.* at 381. Under either circumstance, breaching the agreement
11 violates a court order and therefore provides the court with ancillary jurisdiction to enforce the
12 agreement. *Id.* Absent such circumstances, a party seeking to remedy the breach must initiate a
13 new lawsuit to enforce the contract. *Id.*

14 III. DISCUSSION

15 Johnson requests this court enforce the parties’ settlement agreement, but does not
16 address whether this court has jurisdiction to do so. It does not. The court’s dismissal order
17 referred to the parties’ settlement agreement but did not retain jurisdiction to enforce it or
18 incorporate the parties’ obligation to comply with its terms such that the breach alleged here
19 “flout[s] or imperil[s]” the court’s order. *See Kokkonen*, 511 U.S. 375, 380 (1994); *see id.* at 381
20 (“The judge’s mere awareness and approval of the terms of the settlement agreement do not
21 suffice to make them part of his order.”); *see also In re Valdez Fisheries Dev. Ass’n, Inc.*, 439
22 F.3d 545, 549 (9th Cir. 2006) (finding bankruptcy court’s dismissal order, which stated, “[t]he
23 conditions of the settlement hav[e] been fulfilled[,]” did not incorporate “the parties’ obligations
24 to comply with [the agreement’s] terms”) (citations and internal quotation marks omitted).
25 Johnson repeatedly disregarded this court’s orders, then expressly requested the court order him
26 to show cause for not dismissing the case but never responded when the court advised it was

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1 considering dismissal, and now, only after dismissal, moves the court for relief. His claim is for
2 breach of contract and his remedy, if any, must be provided by the state courts. The motion is
3 DENIED.

4 IT IS SO ORDERED.

5 DATED: July 25, 2018.

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UNITED STATES DISTRICT JUDGE
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